

December 21, 2018

Mr. Devin Leary  
Human & Rohde, Inc.  
512 Virginia Avenue  
Towson, MD 21286

Re: Augsburg Lutheran Home of Maryland  
Forest Conservation Variance  
Tracking #04-18-2864

Dear Mr. Leary:

A request for a variance from the Baltimore County Code Article 33 Environmental Protection and Sustainability, Title 6 Forest Conservation was received by this Department on November 26, 2018. If granted, the variance would allow removal of eleven (11) specimen trees to expand an existing assisted living facility and construct a new 3-story independent living facility with associated parking areas. The 11 specimen trees to be removed include: a 30-inch diameter-at-breast-height (DBH) tulip poplar, a 38-inch DBH tulip poplar, a 30-inch DBH pin oak, and a 32-inch silver maple, all in good condition; a 34-inch DBH tulip poplar, a 33-inch DBH green ash, a 40-inch DBH tulip poplar, a 31-inch DBH silver maple, a 30-inch DBH silver maple, and a 35-inch DBH American sycamore, all in fair condition; and a 65-inch DBH tulip poplar in poor condition. Four of these trees are in lawn and landscaped areas with the remaining seven in forest. There are 25 other specimen trees on the property that will not be impacted by construction, 18 of which are to be retained in a Forest Conservation Easement and/or Forest Buffer Easement.

The Director of the Department of Environmental Protection and Sustainability (EPS) may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of the property. The applicant is seeking to construct a major expansion of

an existing elder care facility, including a new independent living facility. As the property is already functioning as an elder care facility without the proposed expansion, full application of the law would not deprive the applicant of all beneficial use of the property. Consequently, we find that this criterion has not been met.

The second criterion (Subsection 33-6-116 (d) (2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The petitioner's plight is due to the number and distribution of the specimen trees across the site rather than general conditions of the neighborhood. Therefore, we find that the second criterion has been met.

The third criterion (Subsection 33-6-116(d) (3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The surrounding neighborhood consists of single-family homes and an elementary school. The property contains the subject elder care facility that has existed since 1929. The proposed independent living facility will be screened from adjacent residences by 40 to 800 feet of forest to be retained in Forest Conservation Easement, and the proposed addition to the assisted living facility is situated in the interior of the existing building complex on Campfield Road rather than extending toward neighboring properties. Therefore, we find that the expansion will not alter the essential character of this neighborhood and that this criterion has been met.

The fourth criterion (Subsection 33-6-116(e) (1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The project will not directly impact any wetland, stream, floodplain, or associated Forest Buffer Easement. Specifically, none of the specimen trees to be removed are within the existing Forest Buffer Easement that was recorded in 2009. Furthermore, the development project must comply with current Storm Water Management Law. As such, this Department finds that the proposed variance will not adversely affect water quality. Consequently, this criterion has been met.

The fifth criterion (Subsection 33-6-116(e) (2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any actions resulting in conditions or circumstances requiring this special variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code. Although 11 of 36 specimen trees are to be removed in addition to the clearing of 5.0 acres of forest, the area of forest to be retained exceeds the 11.2-acre break-even point by 4.1 acres. Moreover, the forest

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to be retained in the Forest Buffer and/or Forest Conservation Easement contains 18 specimen trees that will be protected in these easements, and the specimen trees to remain outside of forest will be protected during construction in accordance with an approved forest conservation plan (FCP). Therefore, we find that this variance is consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code and that this criterion has been met.

Based on our review, this Department finds that all required variance criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code with the following conditions:

1. Mitigation for the removal of the 32-inch DBH silver maple, the 31-inch DBH silver maple, the 30-inch DBH silver maple, and the 35-inch DBH sycamore is required given their good or fair condition and location outside of forested areas. This mitigation shall be addressed by a payment of a \$3,629.64 fee-in-lieu prior to EPS approval of any grading or building permit. The check must be made payable to Baltimore County. Mitigation for removal of the remaining seven specimen trees is not required, given that they are in forest to be mitigated and protected in accordance with Sections 33-6-111 and 33-6-112 of the Forest Conservation Law.
2. A final FCP detailing the protection of the remaining specimen trees and forest shall be submitted to EPS and approved prior to grading plan approval.
3. The Declarations of Protective Covenants for the Forest Conservation Easement and the Forest Buffer & Forest Conservation Easements, as shown on a revised record plat approved by EPS, shall be recorded in Baltimore County Land Records by December 28, 2020 or prior to release of any EPS held securities.
4. The following note must be on all subsequent plans for this development project:

“A variance was granted on December 28, 2018 by Baltimore County Dept. of Environmental Protection and Sustainability to remove 11 specimen trees. Conditions were placed on this variance to ensure that the spirit and intent of the Forest Conservation Law were met, including retention of forest above the break-even point in a Forest Conservation Easement as well as payment of a fee-in-lieu of mitigation.”

This variance approval does not exempt future development activities or future removal of specimen trees at this site from compliance with Baltimore County's Forest Conservation Law.

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It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the party responsible for meeting the conditions of this variance sign the statement below and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please call Ms. Libby Errickson at (410) 887-3980.

Sincerely yours,

David V. Lykens  
Acting Director

DVL/lbe

- c. Mr. Richard Matz, Colbert Matz Rosenfelt  
Mr. Glenn Scherer, Augsburg Lutheran Home of Maryland  
Ms. Marian Honecny, Maryland Department of Natural Resources

I/we agree to the above conditions to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

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Owner's Signature

Date

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Printed Name